IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/12/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice N. KANNADASAN

W.A. No.503 OF 1999
and
C.M.P. No.5088 OF 1999

K.S. Sundaram ..... Appellant

-Vs-

1. Union of India
rep. by its Secretary
Department of Company Affairs
Ministry of Industry
New Delhi

2. M/s. Addisions Paints &
Chemicals Limited
Chennai

3. M/s. Addison Paints and
Chemicals Limited Assistants Assocn.
rep. by its Secretary ..... Respondents

Appeal under Cl.15 of the Letters Patent against the order
dated 24-11-1998 made in W.P. No.13455 of 1990

!For Appellant :: Mr. Harikrishnan,
Senior Counsel for
Mr.Srinath Sridevan

^For Respondents :: Mr. T. Arunan
A.C.G.S.C., for R1
Mr. Dulip Singh for
M/s. King and Partrige (R2)
Mr. N.G.R. Prasad for
M/s. Row and Reddy (R3)

:ORDER

The appellant/petitioner challenges the judgment of the

learned single Judge, dismissing the writ petition, challenging the order dated 21-6-1990 passed by the Union of India, first respondent herein, (in short the "Government") whereby the Government refused to grant approval to the appointment of the appellant as the Chairman and Managing Director of the second respondent company (in short "the company").

2. On 2-6-1988, a resolution came to be passed in the Annual General Meeting of the company, appointing the appellant as the Chairman and Managing Director with effect from 14-7-1988 upto 13-7-1992, i.e. for a period of four years. He was to get the remuneration of Rs.750 0/- per month in addition to 1% commission on the net profits of the company and other perquisites. As per the amended provisions of Sec.269 of the Companies Act, which amendment came into force from 1-6-19 88, an application dated 19-7-1988 came to be made for approval under that section.
2.1. The Government called for some particulars from the company, which were duly furnished. Thereafter, by communication dated 19-3-19 90, the company as also the appellant were called upon to show cause within thirty days as to why the proposal of the company for reappointment of the appellant as the Chairman and Managing Director should not be rejected.
2.2. In this detailed show cause notice, it was, inter alia, contended that one M/s. Tambraparani Enterprises, wherein the appellant, his wife and son were the partners, was appointed as the Commission Agent under an agreement dated 10-7-1986 and had received huge commissions in the years 1986, 1987 and 1988. It was urged that while making an application for reappointment, the appellant had failed to disclose his own interest in the aforesaid partnership firm against item No.7 in Form 25-A and this amounted to a misstatement, punishable under Sec.628 of the Companies Act. BY way of second reason, it was stated that the Managing Director had misused his fiduciary capacity in respect of the contracts with M/s.Tambraparani Enterprises which in turn had entered into a contract with M/s. Tambraparani Distempers for the manufacturing of distempers since the company parted with its machinery, technical knowhow and the research. It was alleged that the sale of assets of the company to M/s.Tambraparani Enterprises, which was only a trading concern, was not above board. It was also suggested that advances were given of huge amounts to a concern called M/s. Madras Fabricators wherein the wife of the appellant was holding 55% shares and, therefore, the appellant had misused his fiduciary capacity. Fourthly, it was stated that the expenses of the trip of the son of the appellant to Singapore were unjustifiably borne by the company. It was also stated that the Colour Television and Video Cassette Recorded, imported in 1982, belonging to the company were installed at the residence of the appellant and it was lastly suggested that he had incurred expenditure on account of gas and electricity consumption amounting to approximately Rs.13,000/-, which was in excess of the limits prescribed in the approval letter dated 29-4-1985 of the Government.
2.3. On these counts, it was suggested that the Government was satisfied that the appellant was not a fit and proper person to be appointed as the Chairman and Managing Director of the company.

3. A detailed reply is claimed to have been given by the appellant to this show cause notice on 16-4-1990. In this reply, the appellant claimed that there was no need for the approval of the Government

and the application for approval was being withdrawn. Yet it seems the appellant had supplemented his reply by another communication dated 23-4-1990 and also appeared in person before the Joint Secretary for a personal hearing. It seems that these communications of the appellant were sent by the Government to the company for its comments because obviously these two communications were sent not by the company but by the appellant himself. On 24-5-1990, the company wrote to the Government and requested further three months' time to offer its' comments.

4. The Government passed the order on 21-6-1990, rejecting the application. In that, the Government firstly came to the conclusion that the appellant was not a fit and proper person to be appointed as the Chairman and Managing Director. It also came to the conclusion that the contention of the appellant that the approval was not at all necessary was also not correct. In that, it was pointed out that the company had suffered a loss in the previous years and had also suffered the loss in two years of the three previous years thereto; that as per the company's letter dated 24-5-1990, the company had adequate profits either in the year 1987 or in any of the three years out of the four financial years immediately preceding the financial years and as such condition (f) of Schedule XIII i.e. adequate profits test was not satisfied.

5. This was challenged before the learned single Judge, who initially allowed the petition on the ground that the order was a nonspeaking order. However, the petition was again posted at the instance of the third respondent Association and ultimately the petition was dismissed by the impugned judgment. It will be pertinent to note that by the order dated 23-4-1991 on WMP No.26872 of 1990, the third respondent Association was allowed to be impleaded as a party to the writ petition.

6. While assailing the impugned order passed by the learned single Judge, confirming the order dated 21-6-1990 passed by the Government, the learned senior counsel, Shri Harikrishnan, for the appellant firstly submitted that the approval of the Government was not at all necessary and, therefore, the order passed by the Government, refusing the approval was wholly without jurisdiction and a non est order.

6.1. The second limb of the argument was that even if the approval was found necessary, the Government had passed a bald order, without considering the contentions raised by the appellant in his detailed reply wherein, he had answered every charge with the help of the documents. Learned counsel very heavily came down upon the said order as being arbitrary and bereft of any reasons. According to the learned counsel, this was a judicial or, as the case may be, quasi-judicial function on the part of the Government and as such it was obliged in law to consider the issue of approval objectively and give the reasons in support of its finding that the appellant was not a fit and proper person.

6.2. Learned counsel also suggested that this finding brought stigma to the appellant apart from the fact that he might be required to suffer financially as he might be required to return all the monetary benefits which

he had received during the period of his appointment as the Chairman and Managing Director of the company.

7. As against this, Mr. T. Arunan, learned Additional Central Government Standing Counsel, appearing for the first respondent, argued that on a proper interpretation of Schedule XIII of the Companies Act, the approval of the Government is a must. He pointed out that under the amended provisions of Sec.269 of the Companies Act, any company in order to be exempted from the ritual of getting approval from the Government had to strictly comply with the conditions of that section and, in this case, the Schedule XIII test was not passed by the company since it had not made profits either in the previous years of the appointment or in any of the three years of the four years prior to that year.

7.1. As regards the second limb of the argument of Shri Harikrishnan, the learned standing counsel suggested that this was not a judicial or quasi-judicial function but was an administrative function on the part of the Government as it is the duty of the Government to act as the watchdog of the interests of the shareholders of the Government. He further pointed out that before taking the decision of refusing the approval, the Government had made a thorough investigation and had gone to the extent of even affording the personal hearing to the appellant.

8. Shri Dulip Singh, learned counsel appearing on behalf of the company, supplemented the arguments of Shri Arunan by pointing out that the interpretation sought to be put on Sec.269 of the Companies Act and Schedule XIII thereto by the appellant was not correct and that in reality the approval was a must. He also pointed out that the misuse of the financial powers and the shaddy financial transactions were apparent on the face of the record and was almost an admitted position. He also reiterated that the function under Sec.269 for granting of the approval was not a judicial or quasi-judicial function and that the procedure adopted by the Government for giving the findings that it did was extremely fair.

9. Shri Prasad, learned counsel appearing on behalf of the third respondent association, also reiterated that the appellant had tried to drain the finances of the company and siphon them into the concerns in which he was personally interested and thereby the whole company was made a financial wreck. He pointed out that the decisions taken by the appellant as Managing Director of the company were against the interests of the company and thereby the employees of the company had also to suffer.

10. In the beginning of the debate, learned senior counsel for the appellant made a grievance of the fact that though the learned single Judge had dictated the judgment in the open court and thereby allowed the petition holding the impugned order dated 21-6-1990 to be an order without reasons, the learned Judge then decided to re-hear the petition that too, at the instance of the third respondent association which had no say in the matter. The learned Judge therefore erred in re-hearing the matter and deciding the same.

11. We do not agree with this contention for the simple

reason that it was an admitted position that the third respondent was impleaded as a party and it is also an admitted position that during the first hearing the third respondent was not heard at all as perhaps, there was no notice to the third respondent of the hearing. The impleadment order was not challenged further and that order became final between the parties. Therefore, the third respondent was bound to be given a reasonable opportunity of being heard. This is apart from the fact that before the learned Judge no grievance seems to have been made regarding the course adopted by the learned single Judge of rehearing the matter. We do not see any such grievance at least from the order. We will, therefore, not accept the argument by the learned senior counsel for the appellant that the learned single Judge erred in re-hearing the matter and deciding it afresh.

12. On the rival contentions raised by the parties, the questions to be decided would be:
1.Whether under the amended provisions of Sec.269 of the Companies Act, the approval of the Central Government for the appointment of the appellant as the Chairman and Managing Director of the company was necessary?
2.If the answer the first question is in affirmative, whether the approval was rightly rejected in that whether any prejudice has been suffered by the appellant on account of the absence of the reasons in the order?

13. We must first put on record that it was not seriously disputed that it is only the amended provisions of Sec.269 of the Companies Act which are applicable to the present controversy because the amendments have been made applicable with effect from 1-6-1988 and the resolution appointing the appellant was passed on 2-6-1988. We will, therefore, proceed on the basis that it is the amended provisions of the Act which are applicable. Learned senior counsel urged that the requirement of approval and the procedure therefor was felt cumbersome and, therefore, Sec.269 of the Companies Act was extensively amended. Subsection (1) of Sec.269 provides that on the commencement of the Amendment Act 1988, every public company, or a private company which is a subsidiary of a public company, having a paid-up share capital of a particular level would have a managing or whole-time director or a manager. Sub-section (2) of Sec.269 reads as under:
On and from the commencement of the Companies (Amendment) Act, 1988, no appointment of a person as a managing or whole-time director or a manager in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government unless such appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said Parts being subject to the provisions of Part III of that Schedule) and a return in the prescribed form is filed within ninety days from the date of such appointment.
Sub-section (3) provides that such application seeking the approval shall be made within ninety days of such appointment while subsection (4) provides that the Central Government shall not accord such approval if:
(a) the managing or whole-time director or the manager appointed is, in its opinion, not a fit and proper person to be appointed as such or such appointment is not in the public interest; or
(b) the terms and conditions of the appointment of managing or whole-time director or the manager are not fair and reasonable.

Sub-section (6) provides that if the appointment is not approved, the person so appointed shall vacate the office on the date on which he is communicated the decision by the Central Government. Sub-section (7) gives a suo motu power to the Central Government if it receives the information and on that basis is of the prima facie opinion that any appointment made under sub-section (2) without the approval of the Central Government has been made in contravention of the requirements of Schedule XIII, it shall be competent for the Central Government to refer the matter to the Company Law Board for the decision. Subsections (8), (9) and (10) speak about the powers of the Company Law Board while deciding such reference.

14. From the reading of the aforesaid section, it is, therefore, necessary that if the case of the appellant that the approval was not necessary has to be accepted then, it would be for the appellant to show that the appointment is made in accordance with the conditions specified in part I and Part II of Schedule XIII which parts are also subject to the provisions of Part IV of that schedule. It will, therefore, be necessary for us to consider the said Schedule.

15. Part I of Schedule XIII contains six clauses, viz. (a) to (f). We are concerned only with clause (f). For the sake of convenience, we will quote the provisions:
"SCHEDULE XIII
(See Sections 198, 269, 310 and 311)
CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

PART I

APPOINTMENTS

1. No person shall be eligible for appointment as a managing or whole-time director or manager of a company unless he satisfies the following conditions, namely:-

(a) ... not relevant...
(b) ... not relevant... (c) ... not relevant...
(d) ... not relevant...
(e) ... not relevant...
(f) if the company had not suffered loss or had inadequate profits during the financial year immediately preceding the financial year in which the appointment is made (hereinafter referred to as the preceding financial year) or in any of the three financial years in the four financial years immediately preceding the preceding financial year."

It is this clause which is very heavily relied upon by the learned counsel to suggest that the approval was not necessary. Learned counsel invited our attention to a document on record, which is a letter dated 24-5-1990, sent by the company to the Central Government in response to the Central Government letter dated 14th/15th May 1990. Learned counsel points out that in that letter, the Government had provided the details of the loss or adequate

profits furnished by the company under Sec.198. The portion relied upon by the learned senior counsel is being re-produced here:

Year ended Book Profit 198 Profit* Remuneration

Rs. Rs. Rs.

31-12-1987 452733 235456 93922 Minimum

31-12-1986 2065032 2218714 110936 Minimum

31-12-1985 2095601 343366 L 89404 Minimum

31-12-1984 2737992 L 2738897 L 89897 Minimum

31-12-1983 792906 430347

(*This is even after adjusting the sitting fees)

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16. From this, learned counsel points out that since the appointment was in the year 1988, the previous year of that appointment would be 1987 during which the company had earned adequate profits. Learned counsel further points out that the four preceding years would be 1 983, 1984, 1985 and 1986. He points out that the company had not made adequate profits either in the year 1987 or in any of the three years out of the four financial years immediately preceding the financial year i.e. 1983 ti 1986. He points out further that there is a clear-cut assertion in this letter that the company had made adequate profits in the year 1986. According to the learned counsel even if the company had made the adequate profits in any one of the four preceding years contemplated in clause (f) the company would not require the approval of the Central Government.

17. On a plain reading of the language, we do not see as to how such an argument can be accepted. In order that there has to be an exemption, it must be proved that the company had not suffered loss or had adequate profits during the previous year to the year in which the appointment is made. In the present case, the appointment having been made in the year 1988, the company should not have suffered loss or should not have earned inadequate profits during the year 1987 and it is clearly suggested that in the year 1987, the profits earned by the company were not adequate as per the rules. So also, it must be established that it had not suffered loss or generated inadequate profits during any of the three financial years in the four financial years immediately preceding the said year of 1987. The table clearly suggests that it had suffered loss in two years i.e. 1984 and 1985 and had generated inadequate profits in the year 1983. It is only in the year 1986 that the company had made the adequate profits. However, the learned counsel urges that even if the company had earned adequate profits in any of the four preceding years of the year of appointment, Schedule XIII will not apply and necessarily, the appointment will not come within the mischief of Sec.269. For this purpose, learned counsel invites our attention to the Company Law Board Circular No.3 of 1989 dated 13-4-1989. Our attention is more particularly drawn to clause (1) which deals with the appointment and remuneration of the managerial personnel vide subsection (1) of Sec.269. Learned counsel then relied upon the following text:

"(b) In so far as clause (f) is concerned, the company has to ensure at the time of appointment of its managerial personnel that it had not suffered loss or had adequate profits during the financial year immediately

preceding the financial year in which the appointment is made or in any of the three financial years in the four financial years immediately preceding the financial year in which the appointment is made.
In other words, the company must have earned adequate net profits computed in the manner laid down in sections 349, 350 and 351 either during financial year immediately preceding the year of appointment or during any of the three financial years out of four financial years immediately preceding the preceding financial year.
Illustration
Where the appointment is made during the financial year 1990, approval of the Central Government is not necessary if the profits were adequate-
(1) during the financial year 1989, being the financial year immediately preceding the financial year in which appointment is made; or
(2) in any of the three financial years out of four financial years, namely 1985, 1986, 1987 and 1988 (being the four financial years immediately preceding the "preceding financial year").
... ...

From this the learned counsel says that, relying on the second illustration, since the profit was adequate in the year 1986, there would be no application of Schedule XIII.

18. We fail to follow the argument because even as per clause (b) of Part I and the Illustration (2), on which heavy reliance is placed, the requirement of earning the adequate profits in any of the three financial years is a must for taking the company out of the mischief of Sec.269(2). Perhaps, what is being done is the word "one" is being read into the second illustration after the opening words "in any". That is simply not possible. The company not having made the adequate profits in three years out of the four years immediately preceding the preceding year of appointment could not have claimed the exemption of approval contemplated in Sec.269. The argument, therefore, is clearly incorrect. The subsequent argument of the learned counsel that the original application was withdrawn and, therefore, the Central Government should not have acted upon the application made and the notice issued by the Central Government, has to be rejected. In our opinion, the learned single Judge has correctly interpreted the provisions though the learned single Judge was not armed with the subsequent circular to which we have adverted earlier. If we accept the argument that the adequate profits made in any of the four preceding years of the preceding year in which the appointment is made is sufficient to take out the company out of the mischief of Sec.269(2), we would be doing violence to the language of clause 1(f) of Schedule XIII. The argument is, therefore, rejected and it is held that the Central Government was right in holding that the approval of the Central Government essential for the appointment of the appellant. We answer the first question accordingly.

19. Learned counsel then urged that even if that be so, the order was clearly bad as it is bereft of reasons. For this learned counsel urged that the act of approval as required under Sec.269 is a judicial or at any rate quasi-judicial act. In support of his proposition, learned counsel relied on the Division Bench judgment of the Gujarat High Court in CIBATUL

LTD. AND OTHERS v. UNION OF INDIA (50 Company Cases 437). Learned counsel suggested that the power under Sec.269 has been held in the nature of quasi-judicial power and, therefore, it must be shown before such an order is passed that the relevant facts have been taken into consideration, a fair and proper opportunity is given, there has been an active consideration of all the facts before the authority, which have also been brought by the concerned parties; lastly, such consideration must be writ large by way of reasons in the order. Learned counsel was at pains to point out that in the aforementioned judgment, the Division Bench has relied on the reported decision of the Supreme Court in RAMPUR DISTILLERY AND CHEMICAL CO. LTD. v. COMPANY LAW BOARD (AIR 1970 SC 1789) where Sec.326 of the Companies Act fell for consideration. It is pointed out that the language of Sec.326 of the Act, as it then stood, is almost pari materia with the provisions of Sec.269 inasmuch as subsection (2) of the Sec.326 read as under:

"(2) The Central Government shall not accord its approval under subsection (1) in any case, unless it is satisfied-

(a) that it is against the public interest to allow the company to have a managing agent;

(b) that the managing agent proposed is, in its opinion, a fit and proper person to be appointed or reappointed as such, and that the conditions of the managing agency agreement proposed are fair and reasonable; and

..."

It is pointed out by the learned counsel very painstakingly that the Supreme Court had observed therein in the following words:

"Investment of power in the Central Government under Sec.326 carries with it a duty to act judicially, i.e. to hold an enquiry in a manner consistent with the rules of natural justice to consider all relevant matters, to ignore irrelevant matters, and to reach a conclusion without bias, without predilection and without prejudice. The satisfaction contemplated by s.326 must, therefore, be the result of an objective appraisal of the relevant materials. The recital about satisfaction may be displaced by showing that the conditions did not exist, or that no reasonable body of persons properly versed in law could have reached the decision that they did."

20. In the aforementioned Division Bench judgment, the learned Judges ultimately went on to hold that this power is a quasi-judicial power and not administrative power. It, therefore, went on to observe further on facts:

"The question whether a particular officer acted in a quasi-judicial manner or not could be seen from the manner in which the order is passed. ... In fact, advocate for the petitioner No.2 approached the officer to pass a speaking order and he refused to do so. It is well settled that when any person, in a quasi-judicial matter, passes an order without stating the reasoning by which he had come to that particular finding, the order itself is arbitrary on the face of it. The person against whom the order is passed is entitled to know as of right as to under what circumstances and for what reasons his prayer was being rejected. As soon as one tells him that his prayer is rejected and that he is not bound to give reasons, the order passed is an order which is arbitrary and is required to be set aside. That order can never be sustained in a State where the citizens are governed by law. Even a citizen who

approaches any authority who has a power to act judicially and he acts in a quasi-judicial manner where he is bound to take objective facts into consideration, the person against whom the order is passed is entitled to know that only the relevant factors were considered objectively, that irrelevant factors were never entered the field, that the mind was applied and that with a proper reasoning the order was passed. It is quite likely that another person may take a different view, but that is entirely a different matter. If the court has no power of appeal over a quasi-judicial officer, the court may not exercise that power but the court has certainly a power to examine as to whether the person had a power, whether the person exercised that power judicially, whether the power that was exercised was not exercised arbitrarily and it was in a judicial manner in the sense it was made known that all relevant factors were considered and irrelevant factors were never considered. This would be the essence as to how a quasi-judicial officer is expected to behave and act. The order passed on the face of it should show that the order was passed after taking into consideration all the relevant objective facts. This is only possible if the order is a speaking order. If on the face of it the order does not show any reason, the arbitrariness is writ large on it."
The Court further observed in the same paragraph:
"In this case it is more than clear that the officer who revised the proposal in regard to the reappointment of petitioner No.2 not only did not state any reasons but he refused to pass a speaking order when he was requested to do it. We are, therefore, satisfied that the order passed is required to be struck down."
21. When we look at the facts involved in the case, it is apparent that a request was made for re-appointment of a person as Managing Director for a period of five years on the settled terms. However, the Government of India sanctioned and gave approval for a period of two years and the terms and conditions, which was set out by the company, were also revised to a great extent, as regards the duration of appointment, the salary structure, as was proposed, and also substantial reduction was made in the payment of commission. Even the other terms of appointment were revised perhaps owing to the guidelines which were then in existence. The Court ultimately held that those guidelines were illegal and we are not concerned with that aspect of the matter. The Court, however, noted that the manner in which the impugned order was passed granting the approval, that too on the basis of the revised terms and conditions of service, was ultimately incorrect inasmuch as the Central Government had not acted in a judicious manner. It was specifically noted that the advocate, who was representing the concerned appointee, had requested specifically the concerned officer to pass a speaking order. However, that was not done and a bald order came to be passed, revising the terms and conditions. Therefore, the learned counsel suggested that the order passed by the Central Government, refusing the approval has to be struck down. According to the learned counsel the order gives no reason and as such amounts to an arbitrary order.

22. We will therefore test the impugned order on these lines. It is an admitted position that after the application was made by the company for re-appointment of the appellant as the Chairman and Managing Director of the company, the Central Government thoroughly investigated the affairs of the company. It is clear that a thorough

investigation was made into the affairs of the company and it is only thereafter that the show cause notice came to be issued. The very language of the show cause notice suggests that a proper investigation was made into the affairs of the company by the Central Government and its officers because, otherwise, it would not have been possible to frame those six reasons in the nature of findings which are to be found in the communication dated 19-3-1990. In its counter before the learned single Judge, the Central Government points out in paragraph 3 that the representation of the appellant was not only considered but his advocate representative was also allowed to make a representation in writing on the question of the necessity of the approval. It is reiterated that the facts stated in the show cause notice had not been controverted at all and as such, it was established that the appellant had misused his fiduciary position as the Managing Director of the company and, therefore, did not appear to be a fit and proper person to be re-appointed. In paragraph 8, it is specifically averred as under:

"It is wrong to suggest that the petitioner has given details to show that grounds relied by the respondent were factually incorrect. On the other hand, nothing on fact was denied, only a bald and general statement was made that charges made are not sustainable in law as in equity but that is the work of certain disgruntled employees who had engineered certain motivated and malicious allegations."

It is pointed out in paragraph 9 that the representation of the appellant to the show cause notice was heard by the Central Government by giving a hearing to the appellant-petitioner and his advocate. Again in paragraph 9, it is asserted that the facts stated in the show cause notice were not controverted.

23. We have already explained earlier that after the proposal was sent to the Central Government a thorough and complete investigation went on at the instance of the Central Government and queries were put to the company regarding the financial transactions and the records were also examined. We find all this in the counters of the Central Government as also the second respondent company, which claim has remained unchallenged. It is clear that only on that basis, the Central Government went to the extent of formulating its reasons as to why it was prima facie satisfied about the fact that the appellant was not a fit and proper person to be appointed as the Managing Director on the terms and conditions suggested in the resolution. Even the language of the said show cause notice would suggest that the Central Government was satisfied that the proposed Chairman and Managing Director is not a fit and proper person to be appointed. Six reasons in the minute details were given and lastly, the company as also the appellant were called upon to show cause. It is also very important to note that it is precisely against those reasons that the appellant gave his reply by his communication dated 16-4-1990 and also the subsequent communication. It is also pertinent to note that from that reply it was deduced by the Central Government and in our opinion correctly that all those facts and figures were practically admitted by the appellant. Therefore, the Central Government had formulated the reasons on the basis of its investigation and the earlier correspondence and thereafter the notice dated 9-3-1990 came to be issued, giving a complete idea of the reasons probably with the sole idea to give an opportunity to the appellant to dispute the correctness or otherwise of the facts stated therein. Not only this but, even the appellant was heard in

person and was allowed to be represented by an advocate. It is on this backdrop that we will have to examine the order passed to see whether it meets the requirement of the Supreme Court decision.

24. The impugned order is in the nature of a communication. In the opening portion, it refers to the correspondence and specifically mentions the letter dated 24-5-1990, which was sent by the appellant after his letter dated 16-4-1990 by way of supplementing that letter. The order then specifically mentions the facts as detailed in the show cause notice of even number dated 9-3-1990 as also the regulations/submissions made by the proposed appointee in the letters dated 16-4 -1990 and 24-5-1990. It also makes a reference to the explanations furnished and suggests that those explanations have not been found to be satisfactory. Then the letter records that the Central Government is not satisfied that the appellant is not a fit and proper person to be appointed and as such his appointment will not be in the public interest. The second part of the communication deals with the objections raised by the appellant that no approval of the Central Government is required. It refutes the claims raised by the appellant.

25. Now it is, therefore, certain that the communication informs the appellant the material that it was taken into account as also the replies given by the appellant of the reasons (factual assertions) by the Central Government. We have already seen that those allegations are laced with the minutest possible details. We have already pointed out in the earlier part of this judgment those reasons. We also examined the replies given by the appellant and we find that there is no denial to the facts asserted regarding the transactions entered into by the company with M/s. Tambraparani Enterprises, Tambraparani Distermbers and Madras Fabricators. What is tried to be done in the reply is only the justification for those transactions and it has been asserted that the company was benefited because of those transactions. If this is so, then, in our opinion, if the Central Government makes a specific reference in the order to the reasons given and the replies thereto and comes to the conclusion that it is not satisfied with those allegations, in our opinion, the adequate reasons have been given and the order cannot be criticised that it is bereft of the reasons. Meticulous care had been taken to inform the appellant the reasons for which the approval was being contemplated to be refused. The Central Government also took into account the precise defence raised, which was not in the nature of the refusal of the facts stated in the notice dated 9-3-1990 but was justification of those transactions and recorded that explanations are not satisfactory. In our opinion, nothing more could have been required to be done in the circumstances of the case. The nature of the allegations was such that the company entered into that transactions with the firms in which the appellant's wife and son were partners. Those partnership firms also not being a manufacturing firms, were given the contracts and in its turn, entered into agreements with another concern, majority shares of which also owned by the wife of the appellant. It is also suggested that huge amounts were paid by way of commissions to the firms in which the appellant himself was a partner. Huge advances were given to a firm called Madras Fabricators in which the wife of the appellant was holding 55% shares and thereby the said

firm made huge profits in the years 1987-88 when the second respondent company itself went in loss. Huge amounts were sanctioned to foot the bills of Singapore trip of the son of the appellant, properties of the company, viz. Colour Television and Video Cassette Recorder were enjoyed by the appellant not in the company's premises but at his residence. So also, unauthorised expenditure were made on account of gas and electricity consumption charges during the period 1984-85 in excess of the limits prescribed by the approval letter.

26. We have carefully seen the reply which does not in any manner dispute any of these facts but, merely justifies the same on the ground that firstly, it was made known to the shareholders and secondly, that it was necessary in the interests of the company and that the company was benefited thereby. If the Central Government specifically records that it was not satisfied with these explanations, we do not think that anything more, by way of reasons, was required to be given. Therefore, this order passes the tests of reasonableness and judiciousness wherein the affected person, i.e. the appellant knows the reasons on which the decision has been taken. He also has been given a complete and full opportunity to defend himself inasmuch as his explanations are also taken into account, which explanations are in the nature of admissions of the factum of the unauthorised expenditure and the shaddy transactions and all this has been done in a bona fide manner as it is nobody's case that the Central Government or any of its officers have acted in mala fide manner. We are, therefore, satisfied that the order is not such which can be quashed on the grounds urged by the appellant. This is apart from the fact all this does not seem to have been addressed before the learned single Judge. We have carefully seen the order of the learned single Judge and we see no fault in it. Nor do we find any fault with the order passed by the Central Government.

27. The appeal has no merits. It is dismissed with the costs of Rs.5,000/-. Connected CMP is closed.

Index:Yes/

Website:Yes

To:

Secretary to Government
Department of Company Affairs
Ministry of Industry
New Delhi

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